

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALLORIE LOUISE WILSON-STRAT

Defendant-Appellant.

UNPUBLISHED
November 19, 2013

No. 310877
Macomb Circuit Court
LC No. 2011-001987-FH

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MALLORIE LOUISE WILSON-STRAT,

Defendant-Appellant.

No. 310879
Macomb Circuit Court
LC No. 2011-001758-FC

Before: OWENS, P.J., and JANSEN and HOEKSTRA, JJ.

PER CURIAM.

In this consolidated appeal, defendant Mallorie Louise Wilson-Strat appeals as of right her jury trial convictions of first-degree home invasion, MCL 750.110a(2), solicitation of murder, MCL 750.157b(2), and conspiracy to commit first-degree murder, MCL 750.316; MCL 750.157a. Defendant was sentenced to 45 months to 20 years' imprisonment for her first-degree home invasion conviction; 126 months to 25 years' imprisonment for her solicitation of murder conviction, and life imprisonment for her conspiracy to commit first-degree murder conviction. Because we conclude that there was sufficient evidence for a rational trier of fact to find defendant guilty of first-degree home invasion on an aiding and abetting theory beyond a reasonable doubt, we affirm.

The sole issue on appeal is whether there was sufficient evidence to support defendant's conviction of aiding and abetting the commission of first-degree home invasion. Specifically, defendant challenges only the sufficiency of the evidence to establish the "breaking" element of the crime.

We review de novo questions regarding the sufficiency of evidence. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). “A court must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crimes were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999) (citation omitted). “We do not interfere with the jury’s assessment of the weight and credibility of witnesses or the evidence, and the elements of an offense may be established on the basis of circumstantial evidence and reasonable inferences from the evidence.” *People v Dunigan*, 299 Mich App 579, 582; 831 NW2d 243 (2013) (citations omitted).

The first-degree home invasion statute, MCL 750.110a(2), provides:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists: (a) the person is armed with a dangerous weapon. (b) Another person is lawfully present in the dwelling.

Regarding the “breaking” element of first-degree home invasion, Michigan law provides that “any amount of force used to open a door or window to enter the building, no matter how slight, is sufficient to constitute a breaking.” *People v Toole*, 227 Mich App 656, 659; 576 NW2d 441 (1998) (citation omitted).

When viewing the evidence in a light most favorable to the prosecution, the evidence established that defendant paid two men \$1,000 to kill Jessica Scaife,¹ who was Kevin Sears’ wife at the time the crimes were committed, and that defendant drove the men to Scaife’s house to carry out the agreement. Before they got out of the car to go into the house, defendant told the men that Sears had left a basement window unlocked for them to use to enter Scaife’s house. Apparently, the men entered the home but were unsuccessful in carrying out the murder, but took Scaife’s purse. Thereafter, Scaife discovered her purse was missing, and went to her basement where she discovered muddy footprints. Further, she observed that the screen was removed from one of her windows, and she saw footprints in the snow leading up to the basement window missing the screen, as well as footprints leading up to the other windows. Scaife verified that the screen was not normally removed from the window, and that neither she nor any other person opened the window. Trooper Jeffrey Juneac, the police officer who initially responded to the home-invasion call from Scaife, also observed two sets of footprints in the snow leading up to the basement window that was the presumed entry point, and that the screen for that window was on the ground covered in snow.

¹ At the time the crimes for which defendant was convicted occurred Jessica Scaife was Jessica Sears; however, she will be referred to as Scaife in this opinion.

We conclude that there was sufficient evidence for a reasonable juror to conclude that two men entered Scaife's home by removing a screen and opening a basement window, thus satisfying the breaking element required to establish first-degree home invasion. In particular, defendant's testimony that she drove the men to Scaife's home and told them that a basement window would be unlocked paired with Scaife's testimony that there were footprints leading to every basement window and that her window screen is typically secured in the window supports the inference that the men searched for an unlocked window and removed the window screen in order to enter the home. Because "circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime," *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999) (citation omitted), a rational juror could have found that Sears left the window unlocked and that the men opened it and removed the screen. Thus, the evidence was sufficient to establish the breaking element of first-degree home invasion, *Toole*, 227 Mich App at 659, and to support defendant's conviction on an aiding and abetting theory.

Defendant seeks to rebut the circumstantial evidence of breaking by arguing that Sears' testimony at trial established that the window opened as a result of weather or a faulty locking mechanism. However, we "do not interfere with the jury's assessment of the weight and credibility of witnesses or the evidence." *Dunigan*, 299 Mich App at 582. Moreover, the evidence is viewed in a light most favorable to the prosecution, not defendant. *Johnson*, 460 Mich at 732. Further, we find unavailing defendant's argument that "even if the jury disbelieved Sears' testimony that the windows sometimes *opened spontaneously*, it could not permissibly fill the evidentiary gap by concluding that the window *could not have opened* spontaneously." (Emphasis by defendant.) On the contrary, case law provides that "the elements of an offense may be established on the basis of circumstantial evidence and reasonable inferences from the evidence." *Dunigan*, 299 Mich App at 582. Based on the evidence in this case, the jury could have reasonably inferred that upon locating the unlocked window, the men opened the window and removed the screen to gain access to the home.

Finally, we reject defendant's assertion that Juneac's testimony that there was snow on top of the window screen established that the breaking necessarily occurred before the snowfall, and therefore, before the two men entered Scaife's home because "[a]ll conflicts in the evidence must be resolved in favor of the prosecution." *McRunels*, 237 Mich App at 181.

Affirmed.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Joel P. Hoekstra